

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER

I.T.A. No. 2354/Mum/2024
Assessment Year: 2017-18

Publicis Communications Private Limited 126, Viva Centre 126, Mathuradas Mills Compund NM Joshi Marg Off Senapati Bapat Marg Lower Parel Mumbai - 400013 [PAN: AABCA5234G]	Vs	The Assistant Commissioner of Income Tax - 7(3)(2), Mumbai
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Ketan Ved, A/R
Revenue by :	Shri H.M. Bhatt, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 15/07/2024
घोषणा की तारीख /Date of Pronouncement: 15/07/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the Addl/JCIT(A)-4, Bengaluru, dt. 08/03/2024, pertaining to Assessment Year 2017-18.

2. The first ground relates to the disallowance of depreciation on good-will u/s 32 of the Act.
3. Briefly stated the facts of the case are that while scrutinizing the return of income, the AO noticed that the assessee has claimed depreciation @25% on 'Goodwill' at Rs.1,17,452/- and on 'Goodwill -

merger' at Rs.48,89,834/-. On perusal of the records, the AO observed that the assessee was denied depreciation earlier, therefore, following the precedent, depreciation claimed by the assessee was disallowed. The disallowance was confirmed by the Id. CIT(A).

4. We find that the Co-ordinate Bench in ITA No. 588/Mum/2017 *vide order dt. 15/03/2024*, has considered the claim of depreciation on merger and allowed the same. The relevant finding reads as follows:-

"9. We heard the parties and perused the material on record. During the year under consideration, the assessee is amalgamated with CAPL with effect from 01/04/2021 in accordance with the scheme of amalgamation approved by the Hon'ble Bombay High Court. As per the scheme of amalgamation, the assessee has acquired all licenses, registrations, copyrights, patents, trade names, trademarks, intellectual properties, labels, label design, quality certification, leases, tenancy rights, business contracts, customer pricing information, etc. along with fixed assets, current assets, current liabilities and provisions, etc. The assessee has acquired the assets and liabilities at book value and the consideration paid in excess of the net value of assets and liabilities as in the books of CAPL are accounted as goodwill (refer table in para 3 above). The contention of the Revenue is that the excess amount paid is not towards acquisition of goodwill since the assessee is not using the brand name of CAPL and also that the consideration is in the form of shares allotted to the parent company and to the Indian shareholders of CAPL and, therefore, is not paid towards acquisition of goodwill. The Revenue, therefore, attributed Nil as the cost of acquisition of goodwill and disallowed the depreciation claimed by the assessee on the goodwill accounted in the books of account. From the perusal of the scheme of amalgamation we notice that the assessee has inter-alia acquired all licenses, registrations, copyrights, patents, trade names, trademarks, applications for copyrights, patents, trade names, trademarks, intellectual properties, labels, label designs, quality certifications, leases, licenses, tenancy rights business contracts, customer pricing information, etc. along with fixed assets, current assets, current assets, deferred tax assets, current liabilities and provisions, etc. We further notice that the assessee has obtained the valuation of business of CAPL as certified by the Chartered Accountant on the basis of discounted free cash flows method of valuation by which business were valued at Rs.18,56,01,278/- which is more than the cost paid by the assessee. It is also relevant to note that as per the Accounting Standard-10, wherever a business is acquired for a price which is in excess of value of net assets of the business taken over, the goodwill is recorded in the books of account as the difference between the value paid towards acquisition of the business and the net value of assets and liabilities of the transferor company. Therefore, the value of goodwill cannot be treated as Nil for the reason that assessee has not paid any amount specifically towards acquisition of goodwill. The second reason for

disallowing depreciation is that the assessee is not using the brand of CAPL. We have already noted that the assessee has acquired certain intangible assets in the form of patents, trade marks, customer base etc., besides the other assets and liabilities and therefore in our considered view the cost of acquisition of goodwill cannot be treated as Nil merely for the reason that the assessee is not using the brand name of CAPL. Further the certificate obtained from the Chartered Accountant where the valuation is done using DCF method on the future accepted profitability of CAPL is also much more than the cost of acquisition paid by the assessee to CAPL. Therefore, we are of the view, the Revenue is not correct in attributing Nil value to goodwill and thereby denying the depreciation allowance claimed by the assessee. As regards allowance of depreciation on goodwill we notice that the Hon'ble Supreme Court in the case of CIT vs Smifs Securities Ltd (supra) while considering an identical issue held that goodwill arising on amalgamation to be a capital asset eligible for depreciation. The facts in assessee's case being similar the ratio laid down by the Supreme Court as has been followed by the Hon'ble Delhi and Gujarat High Courts is applicable to assessee also. Accordingly we hold that the assessee is entitled for depreciation on the said value as has been claimed on amount recorded as goodwill arising out of the difference between the cost of acquisition paid by the assessee in the form of shares and otherwise and the difference of net value of assets and liabilities as per the book value of CAPL. The Assessing Officer is directed to delete the disallowance made in this regard."

5. Insofar as, the claim of depreciation on brought-forward goodwill is concerned, the Co-ordinate Bench held as follows:-

"9. As regards the disallowance of depreciation on brought forward goodwill we notice that the coordinate bench while consideration the same issue for AY 2009-10 remitted the issue back to the Assessing Officer with a direction to decide it in accordance with the decision for AY 2000-01 and to consider whether assessee has acquired intangible assets eligible for depreciation. The relevant observations of the coordinate bench is extracted below –

022. Ground no.3 and ground no.4 are with respect to depreciation on goodwill. The learned Assessing Officer disallowed the depreciation on goodwill amounting to ₹11,73,198/-. The learned Assessing Officer made the above disallowances on protective assessment manner. The assessee company entered into business transfer agreement with M/s Ambience Advertisement Pvt. Ltd. for ₹6.25 crores. This sum was capitalized by the assessee as goodwill and claimed depreciation there on at the rate of 25%. The first claim of depreciation was made in A.Y. 2000-01. For that assessment year the assessee approached ITAT and ITAT, has set aside the issue to the file of the learned Assessing Officer. Therefore, unless the issue of depreciation decided in that year, this ground of appeal cannot be decided. Accordingly, ground no.3 and 4 of the appeal are also restored back to the file of the learned Assessing Officer to decide it in accordance with the

decision for A.Y. 2000-01 and to consider whether assessee has acquired intangible assets eligible for depreciation.

10. We notice that the Assessing Officer disallowed the depreciation on carry forward goodwill by placing reliance on the decision in earlier year and therefore the above directions of the coordinate bench is applicable for the year under consideration also. Accordingly we remit the issue of depreciation on brought forward goodwill back to the Assessing Officer with similar directions. It is ordered accordingly."

6. Respectfully following the decision of the Co-ordinate Bench (*supra*), Ground No. 1 with all its sub-grounds is allowed and Ground No. 2 with all its sub-grounds is restored to the file of the AO as per the directions given in AY 2012-13.

7. In the result, appeal of the assessee is allowed in part.

Order pronounced in the Court on 15th July, 2024 at Mumbai.

Sd/-

(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 15/07/2024

S.S.P.

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. □ पीलाड्री / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (□ पील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
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Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai